

REMARKS

Claims 1-15 were pending in the Application. Applicants cancelled claims 3, 8 and 13 without prejudice or disclaimer. Hence, claims 1-2, 4-7, 9-12 and 14-15 are pending in the Application.

The Board of Patent Appeals and Interferences affirmed the rejections against independent claims 1, 6 and 11, but reversed the rejections against dependent claims 3, 8 and 13. Applicants are provided one month from the mailing date of the Office Communication to present the dependent claims in independent form to avoid abandonment of the application.

On January 25, 2011, Applicants' attorney, Bobby Voigt, discussed incorporating the limitations of claims 3, 8 and 13 into independent claims 1, 6 and 11, respectively, with Examiner Widhalm. Examiner Widhalm agreed to enter such an amendment and that claims 1-2, 4-7, 9-12 and 14-15 would subsequently be allowed.

As discussed above, Applicants amended claims 1, 6 and 11 to correspond to claims 3, 8 and 13, respectively, written in independent form. These amendments were not to overcome prior art. Hence, no prosecution history estoppel arises from the amendments to claims 1, 6 and 11. *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 62 U.S.P.Q.2d 1705, 1711-12 (2002); 56 U.S.P.Q.2d 1865, 1870 (Fed. Cir. 2000). Further, the amendments made to claims 1, 6 and 11 were not made for a substantial reason related to patentability and therefore no prosecution history estoppel arises from such amendments. *See Festo Corp.*, 62 U.S.P.Q.2d 1705 at 1707 (2002); *Warner-Jenkinson Co. v. Hilton Davis Chemical Co.*, 41 U.S.P.Q.2d 1865, 1873 (1997).

As a result of the foregoing, it is asserted by Applicants that claims 1-2, 4-7, 9-12 and 14-15 in the Application are in condition for allowance, and Applicants respectfully request an allowance of said claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

WINSTEAD P.C.

Attorneys for Applicants

By: 

Robert A. Voigt, Jr.
Reg. No. 47,159

P.O. Box 50784
Dallas, TX 75201
(512) 370-2832

AUSTIN_1\621804v1
7036-P118US 01/25/2011